

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

SIX STAR HOLDINGS, LLC
and FEROL, LLC,

v.

Case No. 10-cv-893

CITY OF MILWAUKEE

PLAINTIFFS' MOTION

FOR AN AWARD OF NOMINAL DAMAGES BY THE COURT

TO PLAINTIFF SIX STAR HOLDINGS, LLC

The Plaintiffs, Six Star Holdings, LLC, and Ferol, LLC, by their attorneys, The Jeff Scott Olson Law Firm, S. C. by Jeff Scott Olson, hereby moves the Court to resolve the claims of Plaintiff Six Star Holdings, LLC, in this case, by entering an award of nominal damages in the amount of one dollar in favor of Plaintiff Six Star Holdings, LLC, and against the Defendant city of Milwaukee.

The grounds for this motion are that the Plaintiffs do not intend to submit any evidence of compensatory damages on behalf of Plaintiff Six Star Holdings, LLC, and it may not recover punitive damages against a city, but it has established a violation of its

constitutional rights, which entitles it to an award of nominal damages. “In an action brought pursuant to Section 1983, “even when a litigant fails to prove actual compensable injury, he is entitled to an award of nominal damages upon proof of violation of a substantive constitutional right.” *McKinney v. Rogers*, 1995 WL 358655, at *4 (N.D. Ind. 1995)(internal citations and quotation marks omitted); “Having vindicated his constitutional rights, Plaintiff is also entitled to an award of nominal damages. *Smith v. City of Chicago*, 913 F.2d 469, 473 (7th Cir.1990)(“Although compensatory damages could not be recovered for a constitutional violation, absent a demonstration of actual injury resulting from the constitutional violation, an award of nominal damages would still be appropriate,” citing *Carey v. Piphus*, 435 U.S. 247, 266–267 (1978)).

If Six Star’s case were submitted to the jury, and the Plaintiffs declined introduce any evidence of actual damages to Six Star, as they plan, the jury would be directed to enter a mandatory verdict for nominal damages. The concluding sentence of Seventh Circuit Civil Pattern Jury Instruction 7.23 reads: “If you find in favor of Plaintiff but find that the plaintiff has failed to prove compensatory damages, you *must* return a verdict for Plaintiff in the amount of one dollar (\$1.00).” (emphasis supplied.) Where, as here, it is already established that a Plaintiff’s constitutional rights have been violated, that that particular Plaintiff does not intend to introduce any evidence of damages, and that Plaintiff is entitled to an award of nominal damages as a matter of law, there is nothing

for the jury to decide as to that Plaintiff, and the court should enter an award of nominal damages.

Dated this Friday, January 30, 2015.

Respectfully submitted,

Six Star Holdings, LLC, and Ferol, LLC,

Plaintiffs,

By

THE JEFF SCOTT OLSON LAW FIRM, S.C.

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/s/ Jeff Scott Olson

Jeff Scott Olson

ATTORNEY FOR PLAINTIFFS

Certificate of Service

I hereby certify that on Friday, January 30, 2015, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Assistant City Attorneys Adam B. Stephens and Stuart Mukamal, Attorneys for the Defendant, and I hereby certify that I have mailed by United States Postal Service the document to the following non ECF participants: none.

/s/ Jeff Scott Olson